UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP Employer-Petitioner

and

Case 27-UC-229

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 667

Union

ORDER

The Union's Request for Review of the Regional Director's Decision and Order is granted as it raises substantial issues regarding the Regional Director's clarification of the bargaining unit to exclude the Pueblo Airport Generation Station (PAGS) employees. When the Regional Director processed this petition, the Employer-Petitioner had hired only 1 employee of the anticipated 16 employees in only 1 of the 4 classifications designated for the new PAGS facility. Because the Employer-Petitioner represented at the hearing that the remaining 15 positions would be filled in January 2011 and trained within a few months thereafter, we remand this case to the Regional Director to reopen the record to take evidence on whether and when the remaining employees were hired, what duties they actually perform, and any other evidence relevant to the merits of the unit clarification issue. Based on that additional evidence and the entirety of the record, the Regional Director shall determine whether the Employer-Petitioner's petition for unit clarification should be granted. Accordingly, the case is remanded to the Regional Director for further action and to issue a supplemental decision on the merits of the petition.²

The Regional Director, however, found it unnecessary to make findings on the unit placement of the DCS/CEMS specialist, who the Employer-Petitioner alleged was a statutory supervisor, because the remaining 15 employees "have not even been hired."

In view of our disposition, we deny as moot the Union's pending motion to reopen the record to admit new evidence in support of its argument that the UC petition was premature.

Chairman Liebman joins her colleagues in remanding this case to the Regional Director. She nevertheless adheres to her view that the Board should, at least initially, defer to the collective-bargaining process in such cases. See <u>Boeing Co.</u>, 349 NLRB 957, 958–959 (2007) (then-Member Liebman, dissenting); <u>Tweddle Litho, Inc.</u>, 337 NLRB 686, 686–687 (2002) (then-Member Liebman, dissenting); see also <u>Ziegler, Inc.</u>, 333 NLRB 949, 951–952 (2001) (then-Member Liebman, dissenting).

WILMA B. LIEBMAN, CHAIRMAN

CRAIG BECKER, MEMBER

MARK GASTON PEARCE, MEMBER

Dated, Washington, D.C., August 26, 2011.